

SENATE BILL REPORT

SB 5533

As of August 24, 2017

Title: An act relating to prohibiting contributions to gubernatorial candidates by entities that collectively bargain with the state.

Brief Description: Prohibiting contributions to gubernatorial candidates by entities that collectively bargain with the state. [**Revised for 1st Substitute:** Prohibiting contributions to and independent expenditures for gubernatorial candidates.]

Sponsors: Senators Rossi, Baumgartner, Fortunato, Braun, Brown, Wilson, Becker, Padden and Angel.

Brief History:

Committee Activity: Commerce, Labor & Sports: 2/06/17, 2/15/17 [DPS-WM, DNP].
Ways & Means: 2/20/17.

Brief Summary of First Substitute Bill

- Prohibits any entity that engages in collective bargaining with the Governor from making contributions to any candidate for Governor, directly or indirectly.
- Prohibits any political committee from making any independent expenditure in support of or in opposition to any candidate for Governor or make contributions to any candidate for Governor, directly or indirectly, unless certain conditions are met.
- Provides for a referendum.

SENATE COMMITTEE ON COMMERCE, LABOR & SPORTS

Majority Report: That Substitute Senate Bill No. 5533 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Baumgartner, Chair; Braun, Vice Chair; King, Rossi and Wilson.

Minority Report: Do not pass.

Signed by Senators Keiser, Ranking Minority Member; Conway, Hasegawa and Saldaña.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Staff: Susan Jones (786-7404)

SENATE COMMITTEE ON WAYS & MEANS

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Background: Initiative 276 (I-276). I-276 passed in 1972 with respect to public disclosure, campaign finance, lobbying, and public records. I-276 declared it to be the public policy, in part, that:

- political campaign and lobbying contributions and expenditures be fully disclosed to the public and that secrecy is to be avoided;
- the people have the right to expect from their elected representatives at all levels of government the utmost integrity, honesty, and fairness in their dealings;
- the people must be assured that the private financial dealings of their public officials, and of candidates for those offices, present no conflict of interest between the public trust and private interest;
- our representative form of government is founded on a belief that those entrusted with the offices of government have nothing to fear from full public disclosure of their financial and business holdings, provided those officials deal honestly and fairly with the people;
- public confidence in government, at all levels, is essential and must be promoted by all possible means;
- public confidence in government, at all levels, can best be sustained by assuring the people of the impartiality and honesty of the officials in all public transactions and decisions;
- the public's right to know of the financing of political campaigns and lobbying and the financial affairs of elected officials and candidates far outweighs any right that these matters remain secret and private; and
- mindful of the right of individuals to privacy and of the desirability of the efficient administration of government; full access to information concerning the conduct of government on every level must be assured as a fundamental and necessary precondition to the sound governance of a free society.

Initiative 134 - Fair Campaign Practices Act (I-134). I-134 passed in 1992, and as amended, declared that:

- the financial strength of certain individuals or organizations should not permit them to exercise a disproportionate or controlling influence on the election of candidates;
- rapidly increasing political campaign costs have led many candidates to raise larger percentages of money from special interests with a specific financial stake in matters before state government—this has caused the public perception that decisions of elected officials are being improperly influenced by monetary contributions;
- candidates are raising less money in small contributions from individuals and more money from special interests—this has created the public perception that individuals have an insignificant role to play in the political process; and
- by limiting campaign contributions, the people intend to:
 - ensure that individuals and interest groups have fair and equal opportunity to influence elective and governmental processes;
 - reduce the influence of large organizational contributors; and

- restore public trust in governmental institutions and the electoral process.

I-134 defined certain terms, including independent expenditure and political committee. Independent expenditure currently means an expenditure that has each of the following elements:

- it is made in support of or in opposition to a candidate for office by a person who is not (1) a candidate for that office, (2) an authorized committee of that candidate for that office, (3) a person who has received the candidate's encouragement or approval to make the expenditure, if the expenditure pays in whole or in part for political advertising supporting that candidate or promoting the defeat of any other candidate or candidates for that office, or (4) a person with whom the candidate has collaborated for the purpose of making the expenditure, if the expenditure pays in whole or in part for political advertising supporting that candidate or promoting the defeat of any other candidate or candidates for that office;
- the expenditure pays in whole or in part for political advertising that either specifically names the candidate supported or opposed, or clearly and beyond any doubt identifies the candidate without using the candidate's name; and
- the expenditure, alone or in conjunction with another expenditure or other expenditures of the same person in support of or opposition to that candidate, has a value of \$800 or more—a series of expenditures, each of which is under \$800, constitutes one independent expenditure if their cumulative value is \$800 or more.

Political committee means any person, except a candidate or an individual dealing with their own funds or property, having the expectation of receiving contributions or making expenditures in support of or opposition to any candidate or any ballot proposition.

Prohibition on Insurer Using Funds for Insurance Commissioner Candidates. No insurer doing business in Washington may directly or indirectly pay or use any money or anything of value for or in aid of any Insurance Commissioner candidate. A violator is subject to a gross misdemeanor charge and is subject to liability for the amount contributed or received. Until 1982, this applied to all candidates, not just for Insurance Commissioner candidates.

Summary of Bill (First Substitute): No entity that engages in collective bargaining with the Office of the Governor or its representatives may make contributions to any such candidate, directly or indirectly.

No political committee may make any independent expenditure in support of or in opposition to any candidate for Governor or make contributions to any such candidate, directly or indirectly, unless:

- the political committee has not accepted contributions from any entity that engages in collective bargaining with the office of the governor or its representative; or
- the political committee segregated contributions received from any entity that engages in collective bargaining with the Office of the Governor or its representatives and the funds used for independent expenditure or contributions were not from the segregated contributions.

The Secretary of State must submit this Act to the people for their adoption and ratification, or rejection, at the next general election.

Defines the term collective bargaining.

The title is changed.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on First Substitute (Commerce, Labor & Sports):

PRO: This is a clean government bill. In 1947, the Legislature decided that having insurance companies contribute to the insurance commissioner's race would have the appearance of corruption. You don't want to have the appearance of corruption in state government. You want to have people actually believe in their state government. How it happens now with the collective bargaining agreements, it has the appearance of corruption, not that the Governor is corrupt but there is an appearance of corruption. We should eliminate that. In the middle of summer, the Governor goes into a back room in Olympia in secret and negotiates salaries and benefits. At the very same time, he is negotiating with people who dump millions of dollars into his campaign. That has the appearance of corruption. We can't have that. We need to clean this up so people can have confidence in what is happening. When the collective bargaining bill passed in 2002, I discussed and talked about the problem that could crop up and the idea that you go in secret into a back room in Olympia and negotiate while money is being dumped into the campaign. This does not look right. Someone will have to defend the indefensible.

This is a simple solution to a real problem. Whether the Governor is actually negotiating in the best interests of the state and taxpayers after receiving campaign contributions from state workers is irrelevant. The mere perception of a quid pro quo is sufficient to cast doubt and suspicion on the process and tarnish the reputation of the Office of the Governor. It is precisely those types of concerns that prohibits insurance companies that do business with the state from making contributions to Insurance Commissioner candidates. The purpose of this prohibition is to ensure the insurance companies do not exert undue influence over or extract favors from the state's Insurance Commissioner for those contributions. The absence of any conflict of interest benefits the public, the insurance industry, and the Insurance Commissioner. The perception that unions could contribute to a Governor who could pay them back during secret contract negotiations erodes the public's trust. The bill would eliminate the unions financial incentive to spend hundreds of thousands of dollars to elect a Governor who they will ultimately negotiate with and restore public confidence in the election system, the negotiating process, and the Governor's office.

In his first election, the Governor received \$1.5 million from SEIU entities or affiliates and \$1.2 million from ASME, which represent state employees. SEIU 925 gave \$135,000. These entities or their affiliates negotiate with the Governor's office. These are large sums of money. There is a significant impact to the budget as a result of these agreements,

approximately \$500 million. The Legislature only has an up or down vote on these contracts and that puts concentrated power in the Governor's office. Also, the meetings are not public. These are reasons why the contributions to the Governor deserve a different level of scrutiny and attention.

CON: The measure as written is one-sided and an unconstitutional restriction on political engagement by working people and free speech. The case of *Citizens United* case was mentioned. Collective bargaining agreements are contracts with the state just like other contracts, like those for goods and services, and for rental properties. One way to make it fairer and not one-sided is to expand its scope to include all such entities negotiating contracts and those receiving tax preferences. You could also include mayors, county commissioners, and legislators. Language was suggested.

Persons Testifying (Commerce, Labor & Sports): PRO: Senator Dino Rossi, Prime Sponsor; Erin Shannon, WA Policy Center; Jami Lund, Freedom Foundation.

CON: Seamus Petrie, WPEA; Alex Hur, SEIU 925.

Persons Signed In To Testify But Not Testifying (Commerce, Labor & Sports): No one.

Staff Summary of Public Testimony on First Substitute (Ways & Means): PRO: It has been illegal for years for insurance companies to contribute to Insurance Commissioner candidates. The reason is to avoid the appearance of corruption. Since 2002 when personnel service reform was enacted, the same groups the Governor is negotiating with are at the very same time contributing to the Governor's campaign. It has the appearance of corruption and we need to make sure that no one thinks our state government is corrupt. This bill makes sure that those negotiating can't dump money into the Governor's campaign; if they dump it into either the Republican or Democratic party, those contributions are segregated and can't be used in the campaigns or independent expenditures.

CON: Testified to the unconstitutional nature of the bill in the policy committee. This bill unfairly restricts contributions from unions. This doesn't pass smell test; opens us up to litigation. Flawed in logic in that it only applies to unions and the Governor's office. It does not apply to the Legislature, other state vendors and contractors, and those who benefit from tax breaks. Ask you to think larger and consider publicly funded campaigns.

Persons Testifying (Ways & Means): PRO: Senator Dino Rossi, Prime Sponsor.

CON: Seamus Petrie, WPEA; Steve Segall, citizen.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.